

**California Business, Transportation and Housing Agency
Small Business Loans and Guarantees
Title 10, Chapter 7**

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the California Business, Transportation and Housing Agency (BTH) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

Proposed Regulatory Action

The Agency proposes to amend the following sections of Title 10 of the California Code of Regulations in order to implement, interpret and make specific Division 3, Part 5, Chapter 1 of the Corporations Code, relating to farm loans: 5000, 5110, 5111, 5112, 5113, 5114, 5116, 5117, and 5119.

No public hearing is scheduled; however, any interested person or his or her duly authorized representative may request a public hearing no later than fifteen (15) days prior to the close of the public comment period.

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Agency. Written comments will be accepted by the Agency until **5:00 p.m. on January 12, 2008**. Submit comments to:

Glenn Stober
California Business, Transportation and Housing Agency
980 9th Street, Suite 2450
Sacramento, CA 95814
Fax: (916) 323-5440
E-Mail: glenn.stober @ bth.ca.gov.

Authority and Reference

The proposed regulation has been adopted under the authority of Corporations Code section 14024 in order to implement, interpret, and make specific Division 3, Part 5, Chapter 1 of the Corporations Code.

Informative Digest / Policy Statement Overview

The purpose of the proposed revision is to:

- 1) Allow Small Business Loan Guarantee Program trust funds to be lent to Financial Development Corporations (FDCs) for the purpose of making farm loans through a master credit agreement, rather than individual promissory notes.
- 2) Clarify existing regulations by:
 - a. Stipulating that the loan from BTH to the FDC shall be at 2% below the prime rate as listed in the western edition of the Wall Street Journal for each day that funds are owed to BTH. That has been the intention of the regulation, and the practice between the FDCs and BTH. However, as currently written the regulation is not clear that the loan shall be at a variable rate.
 - b. Allowing up to 25% of a trust fund account to be comprised of the total outstanding loan balances of loans with a remaining term to maturity of over 84 months (seven years). The change will maintain the intent of the regulation to ensure that adequate funds are available annually to meet the demand for farm loans, but provide for easier monitoring as the current regulation is confusing and subject to interpretation.
- 3) Eliminate unnecessary provisions by deleting all references to a reserve to fund farm loans that has never existed and is not expected to exist.
- 4) Conform loans to farm borrowers to market conditions by allowing FDCs to loan funds to farm borrowers at a maximum rate of 4% above the Wall Street Journal's prime rate, thereby recognizing the credit quality of the borrowers, none of whom would be able to obtain financing without the FDC loan and a guarantee from the USDA. Small business loans are typically 2% to 5% above the prime rate. The rate change also recognizes the cost of administering the farm loan program as the FDCs rely on interest income to help cover the cost of program administration.

Disclosures Regarding the Proposed Action

The California Business, Transportation and Housing Agency has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Potential cost impact on private persons or directly affected businesses: \$1,313 per year to businesses that receive financial assistance through the farm loan program (approximately 75 per year).
- Significant effect on housing: None.
- The proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The regulatory changes make improvements to the process of lending state funds to intermediary re-lenders who make loans to farm operators who would otherwise not be able to obtain financing.
- The adoption of these regulatory changes will not result in the elimination of jobs or businesses in California. The 1% increase in the maximum interest rate that a borrower may be charged will allow financing to be structured consistent with market conditions as program borrowers are unable to obtain conventional financing because of risk. The interest rate cap increase may result in a minor additional cost to some borrowers of \$1,313 per year. That additional cost will provide revenue necessary for the lending FDC to administer its farm loan program and help make capital available to farm operations that would otherwise not be able to obtain it.
- The proposed regulatory changes will not result in the elimination of small businesses in California. The regulatory action makes improvements to a program designed to help small farm operations obtain financing that otherwise would not be available to them.

Effect on Small Business

The California Business, Transportation and Housing Agency has determined that the proposed regulation will impact small businesses.

Alternatives Considered

The California Business, Transportation and Housing Agency must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Agency would be more effective in carrying out the purpose of the proposed action, or be as effective and less burdensome to affected private person than the proposed regulations. The Agency invites interested persons to present statements or arguments concerning alternatives to the proposed regulation during the public comment period.

Contact Person

Inquiries and questions regarding the substance of the proposed regulations, or requests for copies of the proposed text, the initial statement of reasons, the modified text of the regulations, or any other rulemaking documents, should be submitted or directed to:

Glenn Stober
California Business, Transportation and Housing Agency
980 9th Street, Suite 2450
Sacramento, CA 95814
Phone: (916) 324-9538
Fax: (916) 323-5440
E-Mail: glenn.stober@bth.ca.gov

The following person is designated as a backup contact person for inquiries regarding the proposed regulation:

Karen Kawada
California Business, Transportation and Housing Agency
980 9th Street, Suite 2450
Sacramento, CA 95814
Phone: (916) 323-5825
Fax: (916) 323-5440
E-Mail: karen.kawada@bth.ca.gov

Availability of Changed or Modified Text

After the close of the forty-five (45) day public comment period, the Agency may adopt the proposed regulation. As a result of public comments, either oral or written, that are received by the Agency regarding this proposal, the Agency may determine that changes to the proposed regulation are appropriate. If the Agency makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Agency adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Glenn Stober at the above address. The Agency will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

Availability of Initial Statement of Reasons, Rulemaking File and Express Terms of the Proposed Regulations

The Agency has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Agency's office at 980 9th Street, Suite 2450, Sacramento, California 95814, during normal business working hours. Please contact Glenn Stober at the above address to arrange a date and

time to inspect the files. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the regulations. Copies of these items are available, upon request, from the Agency Contact Person designated in this Notice.

Availability of Final Statement of Reasons

The Agency is required to prepare a Final Statement of Reasons. Once the Agency has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Agency Contact Person identified in this Notice.

Agency Internet Website

The Agency maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the BTH website at www.bth.ca.gov.